

**NATIONAL LABOR RELATIONS BOARD
REGION 6**

In Re:)	
)	
Redstone Presbyterian SeniorCare)	Case 06-UC-179416 Amended Unit Clarification Petition

REQUEST FOR REVIEW

COMES NOW, the Employer, Redstone Presbyterian SeniorCare, by and through its counsel, Timothy G. Hewitt, and files this Request for Review from the Regional Director's decision to dismiss the Amended Unit Clarification Petition filed by the Employer in the above-referenced case, and in support thereof, offers the following:

COMPLETE STATEMENT OF FACTS

Redstone Presbyterian SeniorCare (hereinafter "Employer") and SEIU Healthcare Pennsylvania, CTW, CLC (hereinafter "Union"), (collectively referred to as "the Parties") were subject to a Collective Bargaining Agreement (hereinafter "CBA") that was scheduled to expire on August 31, 2016. The Parties entered into a Contract Extension Agreement through September 30, 2016. That Contract Extension Agreement has expired. The Parties have continued to engage in good faith bargaining but there is no valid CBA in place at this time.

The Employer filed an Amended Unit Clarification Petition on July 6, 2016; the Amended Unit Clarification Petition was filed following the withdrawal of a defective Unit Clarification Petition filed by the Activity Aides. Subsequently, the Activity Aides and Laundry Aides requested that the Employer proceed with the subject Amended UC Petition, a copy of which is attached hereto as Exhibit A. The Amended UC Petition requested that the description of the present unit, i.e., "Included: LPNs, CNAs, Nurse Assistants, Cooks, Cook Helpers, Dietary Aides, Maintenance Mechanics, Activity Aides and Laundry Aides" be clarified to provide: "Included: All full time and regular part-time LPNs, CNAs, Nurse Assistants who are employed at the 6 Garden Center Drive, Greensburg, PA location"; "Excluded: "Cooks, Cook Helpers, Dietary Aides, Activity Aides, Laundry Aides, Maintenance Mechanics, Office Clerical, all other employees and guards and supervisors as defined in the Act."

Because there is no existing CBA in place, a dismissal of the Petition pursuant to *Wallace-Murray* is not appropriate. The Regional Director issued a Decision to Dismiss on September 30, 2016, a copy of which is attached hereto as Exhibit B, citing in support for her decision, *Bethlehem Steel Corp.*, 329 NLRB 243 (1999), discounting the Board's decision in *Specialty Healthcare*, 357 NLRB No. 83 (2011) as inapplicable. The Regional Director did not rely upon *Wallace-Murray*. The only basis for dismissal of the Employer's Amended Unit Clarification Petition was the Regional Director's finding that substantial changes are necessary as a pre-condition for using Unit Clarification proceedings to include or exclude employees from pre-existing bargaining units, as set forth in *Bethlehem Steel Corp.*

The Amended Unit Clarification Petition sought to exclude Dietary Aides, Activity Aides, Laundry Aides and Maintenance Mechanics. The pre-UC Petition unit included approximately seventy-five (75) employees in the unit; the post-UC Petition unit would have consisted of approximately forty-one (41) employees. The facts are not in dispute. The unit underwent a substantial change in character as a result of the Employer's lawful contracting out of dietary services, which separated the employment of all thirty-five (35) Dietary Aides from the unit. In the CBA between the Parties, the Union expressly permitted the contracting out of bargaining unit positions, which the Employer lawfully did in compliance with the express provisions of the CBA. It is undisputed that the Dietary Aides were contracted out effective September 1st. The contractor has recognized the Union as the exclusive bargaining representative for its employees who are providing those contracted services. Nearly all of the employees sought to be excluded from the unit in the Amended UC Petition were dietary employees. There is no basis for the Regional Director's dismissal of the Amended UC Petition as it relates to Dietary Aides. In addition to the Dietary Aide classification, the Amended UC Petition sought to remove the classifications of Activity Aides and Laundry Aides. The Activity Aides filed the initial defective UC Petition and notified the Employer that they no longer wished to be included in the bargaining unit. There are no employees presently employed in the Maintenance Mechanic classification, nor have there been any employees employed in that classification for many years; that classification simply has not existed in recent memory. The Employer's basis for filing the Amended UC Petition was that there was a substantial change in the composition of the unit, specifically because the Dietary Aides were never included in a different unit for which the Union was the exclusive bargaining representative. The remaining unit employees, except the four (4) Activity Aides and the two (2) Laundry Aides, all provide healthcare services to residents of the Employer. The four (4) Activity Aides and two (2) Laundry Aides do not share a community of interest with healthcare workers and do not wish to be included in the unit. Rather than conduct an inquiry with respect to the substantial change in character of the

bargaining unit, the Regional Director opted to dismiss the Amended UC Petition without hearing, relying upon *Bethlehem Steel*, for the proposition that there was no substantial change in the aforementioned positions to justify a unit clarification. Of course, there is no dispute that the Dietary Aides, consisting of approximately half of the bargaining unit, were lawfully contracted out from that unit, constituting a substantial change in the unit. Furthermore, while the Union was able to effectively bargain on behalf of service employees for the overall unit, with the change in character through the lawful removal of dietary employees, the remaining unit consists of primarily Certified Nursing Assistants (CNAs) who do not share a community of interests with the six (6) Activity and (2) Laundry Aides. If this were being reviewed as a unit appropriate for bargaining, pursuant to *Specialty Healthcare*, because the Activity and Laundry Aides are a readily-identifiable group who do not share a community of interest with the LPNs, CNAs and Nurse Assistants, they would be excluded from the unit.

ANALYSIS

The facts of this case are undisputed. It makes no sense to distinguish between *Specialty Healthcare* and *Bethlehem Steel Corp*, in the instant case. In *Bethlehem Steel*, the customer service employees had been out of the unit for approximately eight years when a petition was filed to include them; the Board concluded that there was no substantial change within the classification that warranted including them after an eight (8) year hiatus. In this case, there is no CBA in place and the Employer has requested, and continues to request through bargaining, that the unit be clarified in the CBA to be consistent with the Amended UC Petition filed with the Board, excluding not only dietary employees who have been contracted out, but also the six (4) Activity and two (2) Laundry Aides who do not share a community of interest with healthcare workers. All other bargaining unit employees provide healthcare services.

As set forth in response to the Director's request for the Employer's position, the Employer offered that the unit should include only healthcare workers who share an overwhelming community of interest. The Department of Health regulates long-term healthcare facilities and Employers are subject to regulations requiring minimum nursing hours per resident for each 24-hour period. The bargaining unit consists primarily of CNAs who provide hands-on care by assisting with tasks consistent with activities of daily living, under the direction of nursing and medical staff. The essential responsibilities of these employees require provision of care and services defined by individualized care plans, conducting rounds, documenting medical conditions and reporting observed changes in medical conditions to nursing personnel. These semi-skilled positions require a specific course of training, certification and continuing education to maintain certification. The Department of Health conducts annual survey audits and has enforcement actions to

assure compliance with the Department of Health and Code of Federal Regulations regarding qualifications of CNAs and provision of services and documentation. These positions are required, as noted, to work over a 24-hour period and do not share much community of interest with the Activity and Laundry Aides petitioning for unit clarification. The LPNs provide medical care and have many overlapping duties and share the same working hours and staffing requirements as the Nursing Assistants. The CNA one-year rate of pay is \$14.43 per hour; the LPN one-year rate of pay is \$21.80 per hour. The Activity Aide is an entry-level position not requiring any prior experience, education, certification or continuing education and has a one-year pay rate of \$11.77 per hour. The Laundry Aide one-year rate of pay is \$11.77 per hour. The Laundry and Activity Aide classifications share little, if anything, in commonality with the healthcare employees, other than the physical location of their workplace. Certainly, pursuant to *Specialty Healthcare*, activity and laundry aides would not be included in a unit if an employer were seeking to expand a CNA unit; that is, if the petition for a unit was including CNAs, the burden would rest with the Employer to establish an overwhelming community of interest between these groups of employees, which may have been appropriate for inclusion at the time of initial certification in May of 1990, however, this readily-identifiable group of Activity and Laundry Aides should not be compelled to be retained in a unit of employees that, following the removal of the dietary employees through unit clarification, will share very little interest with the petitioning group.

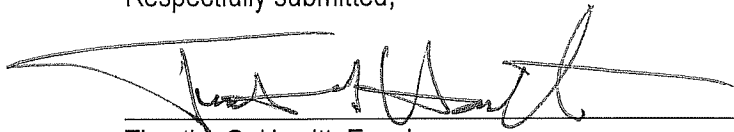
Obviously, the employees in the Activity and Laundry Aides classifications do not want to be in a unit where they cannot effectively be represented by a bargaining agent when they do not share a community of interest with healthcare workers. It is clear that the Union cannot or will not effectively represent the Activity and Laundry Aides, whose jobs do not share common responsibilities or functions similar to those of the overwhelming majority of bargaining unit employees. While it is true that there has been no change in the character of the responsibilities of those individuals, it is equally clear that there has been a fundamental change in the make-up of the unit and these employees do not share a community of interest with the overwhelming majority of employees remaining in the unit, who are all healthcare workers. The Union cannot effectively represent these classifications in an overall unit that is otherwise comprised of only healthcare workers. The overall character of the bargaining unit has been changed so extensively with the contracting out of the dietary employees that this change constitutes an independent basis for a consideration of whether the Employer's Amended Unit Clarification Petition should be granted.

The Amended UC Petition should not have been summarily dismissed by the Regional Director and should be remanded to determine if there is sufficient evidence to determine whether a community of

interest exists to enable the Union to effectively represent the Activity and Laundry Aides. Moreover, the case should be remanded to the Regional Director to address the clarification of the unit as it relates to the classification of Dietary Aides when there is no dispute that the Employer lawfully contracted out that segment of the bargaining unit and when that contractor has recognized and is engaged in bargaining on behalf of employees in an independent unit consisting of those Dietary Aides.

WHEREFORE, it is respectfully requested that the Board reverse the determination of the Regional Director in dismissing the Amended Unit Clarification Petition and remand it for further action as it relates to the Dietary Aides, Activity and Laundry Aides and Maintenance Mechanic classifications.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Timothy G. Hewitt', is written over a horizontal line.

Timothy G. Hewitt, Esquire
Counsel for Redstone Presbyterian Seniorcare

AMENDED

FORM NLRB-602 (UC)
(4-15)UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
UC PETITION

DO NOT WRITE IN THIS SPACE

Case No.

06-UC-179416

Date Filed

7-6-16

INSTRUCTIONS: Unless e-Filed using the Agency's website, www.nlr.gov, submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located.

1. PURPOSE OF THIS PETITION: UC - UNIT CLARIFICATION - A labor organization is currently recognized by the Employer, but the Petitioner seeks clarification of the placement of certain employees or job classifications. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

2a. Name of Employer
Redstone Presbyterian SeniorCare

2b. Address(es) of Establishment(s) Involved (Street and number, city, State, ZIP code)

6 Garden Center Dr., Greensburg PA 15601

3a. Employer Representative - Name and Title

3b. Address (If same as 2b - state same)

James Hodge, HR VP

same

3c. Tel. No.

724-832-8400 Ext 318

3d. Cell No.

3e. Fax No.

724-221-6340

3f. E-Mail Address

jhodge@redstonehighlands.org

4a. Type of Establishment (Factory, mine, wholesaler, etc.)

4b. Principal product or service

Senior Care Facility

Senior Care

5a. Description of Present Unit

Included: LPNs, CNAs, Nurse Assistants, Cooks, Cook Helpers, Dietary Aides, Maintenance Mechanics, Activity Aides and Laundry Aides

6b. No. of Employees in Present Unit

75

Excluded:

6a. Description of Proposed Unit

Included: All full-time and regular part-time LPNs, CNAs, Nurse Assistants who are employed at the 6 Garden Center Drive, Greensburg PA location

6b. No. of Employees in Proposed Unit

41

Excluded: Cooks, Cook Helpers, Dietary Aides, Activity Aides, Laundry Aides, Maintenance Mechanics, Office Clerical, all other employees and guards and supervisors as defined in the Act.

7. City and State where unit is located:

Greensburg PA

8. Check One

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Unit previously certified in Case 8-RC-10421

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Unit not previously certified.

9. Job classifications of employees as to whom the issue is raised and number of employees in each classification

Activity Aides (4), Laundry Aides (2), Maintenance Mechanics (0), Cooks (11), Cook Helpers (0), Dietary Aides (17)

10. Reason Why Petitioner Desires Clarification

Cooks, Cook Helpers and Dietary Aide services are being contracted out as of 8/1/16; Activity Aides, Laundry Aides and Maintenance Mechanics no longer wish to be represented by the Bargaining Agent.

11a. Name of Recognized or Certified Bargaining Agent

11b. Address

SEIU Healthcare Pennsylvania CTW CLC Local 585

237 Sixth Street, Pittsburgh PA 15238

11c. Tel. No.

800-252-3894

11d. Cell No.

11e. Fax No.

11f. E-Mail Address

11g. Affiliation, if any

11h. Date of Recognition or Certification

May 1990

11i. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year)
August 31, 2016

12. Organizations or persons other than Petitioner and those named in item 11, who claim to represent any employees affected by the proposed clarifications. (If none, so state)

12a. Name

12b. Address

12c. Tel. No.

12d. Cell No.

12e. Fax No.

12f. E-Mail Address

12g. Brief description of contract covering those employees.

13a. Full Name of Petitioner (Including local name and number if applicable)

13b. Address (street and number, city, state, and ZIP code)

Redstone Presbyterian SeniorCare

6 Garden Center Dr., Greensburg PA 15601

13c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (If none, so state)

13d. Tel. No.

13e. Cell No.

13f. Fax No.

13g. E-Mail Address

14. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.

14a. Name and Title

14b. Address (street and number, city, state, and ZIP code)

Timothy G. Hewitt, Esquire

215 Chestnut St., Latrobe PA 15650

14c. Tel. No.

724-537-2820

14d. Cell No.

14e. Fax No.

724-537-2879

14f. E-Mail Address

indrahewitt@verizon.net

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name (Print)

Signature

Title

Date

Timothy G. Hewitt

Attorney for Petitioner

July 5, 2016

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are: (1) to provide information to the Federal Register, 74 Fed. Reg. 74842, 43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. NLRB to decline to invoke its processes.

EXHIBIT A



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 06
1000 Liberty Ave Rm 904
Pittsburgh, PA 15222-4111

Agency Website: www.nlrb.gov
Telephone: (412)395-4400
Fax: (412)395-5986

September 30, 2016

Re: Redstone Presbyterian SeniorCare
Case 06-UC-179416

Timothy G. Hewitt, Esquire
215 Chestnut St
Latrobe, PA 15650-1902

Dear Mr. Hewitt:

The above-captioned case, petitioning for an investigation and determination of representative under Section 9(c) of the National Labor Relations Act, has been carefully investigated and considered.

Decision to Dismiss: As a result of the investigation, I find that further proceedings are unwarranted. Redstone Presbyterian SeniorCare ("the Employer-Petitioner") seeks to clarify the existing bargaining unit to exclude three job classifications: activity aides, laundry aides and maintenance mechanics. It is undisputed that SEIU Healthcare Pennsylvania, CTW CLC Local 585 ("the Union") currently represents a bargaining unit of employees employed by the Employer-Petitioner at 6 Garden Center Drive, Greensburg, Pennsylvania ("the Unit"). Based on its recent subcontracting of the facility's Dietary Department, the Employer-Petitioner contends that the activity aides and laundry aides no longer share an overwhelming community of interest with the rest of the unit and should be excluded from the unit. The Employer-Petitioner further asserts that the activity aides and laundry aides in the Unit have expressed that they no longer wish to be represented by the Union for purposes of collective bargaining. Finally, The Employer-Petitioner seeks through its clarification petition to remove the maintenance mechanic position from the Unit on the grounds that it no longer employs anyone in this position. In support of its petition, the Employer-Petitioner relies on the Board's rulings in *Specialty Healthcare*, 357 NLRB No. 83 (2011) concerning the appropriateness of a unit in a "readily identifiable group."

Based on an administrative investigation of these matters, for the reasons set forth below, I find that it would be inappropriate to exclude the represented employees from the historical bargaining unit. I am, therefore, dismissing the petition.

EXHIBIT B

The investigation disclosed that since 1990, the Union has continuously represented a bargaining unit consisting of all full-time and regular part-time employees employed at the Employer's Greensburg, Pennsylvania, facility. The most recent collective-bargaining agreement was effective October 23, 2013 to August 31, 2016, and the parties are currently engaged in negotiations for a successor contract. It is undisputed that the activity aides, laundry aides and maintenance mechanic classifications have been historically included in the existing bargaining unit. It is further undisputed that none of the aforementioned positions have undergone any recent, substantial changes that would warrant clarification of the unit as is required by the Board in UC petitions. See, *Bethlehem Steel, Corp.*, 329 NLRB 243 (1999).

As found in *Bethlehem Steel Corp., Id.*, recent substantial changes are a necessary precondition for using unit clarification proceedings to include or exclude employees from pre-existing bargaining units. Further, the Board's decision in *Specialty Healthcare*, supra, applies to representation petitions and was not intended to disrupt an established bargaining relationship. Accordingly, I am dismissing the petition in this matter.

Right to Request Review: Pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. The request for review must contain a complete statement of the facts and reasons on which it is based.

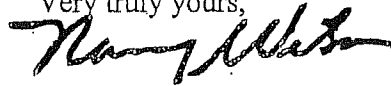
Procedures for Filing Request for Review: A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business (**5 p.m. Eastern Time**) on October 14, 2016, unless filed electronically. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on October 14, 2016.

Consistent with the Agency's E-Government initiative, parties are encouraged, but not required, to file a request for review electronically. Sections 102.114 of the Board's Rules do not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the Efiling system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Upon good cause shown, the Board may grant special permission for a longer period within which to file a request for review. A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Very truly yours,



Nancy Wilson
Regional Director

cc: Office of the Executive Secretary (by e-mail)

James Hodge, HR VP
Redstone Presbyterian SeniorCare
6 Garden Center Dr
Greensburg, PA 15601-1351

SEIU Healthcare Pennsylvania, Local 585, CTW,
CLC
209 Ninth Street, 4th Floor
Pittsburgh, PA 15222

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